1-3-2024

Anna Sartors
Manager, Drinking Water
Division of Water Resources

RE: Lead and Copper, 2022 notification and Public Notice

Dear Ms. Sartors:

As part of the recent sanitary survey, TDEC staff notified me that Tellico Plains' previous management had failed to provide customer notification for 2022 lead and copper sampling results and due to this failure to provide customers with lead and copper results the system was required to issue a public notice to all customers for a monitoring violation due by Dec 23rd, 2023. The results for the lead and copper sampling in 2022 have been sent to all customer addresses used in 2022. I have included an example form which was sent to all customers. I have also included a copy of CN-1595 along with the original email from TDEC notifying Tellico of this issue.

Since being notified that this issue was outstanding from 2022, I have spoken with numerous TDEC staff regarding the request for Tellico to issue a public notice by December 23rd, 2023 to all customers for failing to notify individual customers of their 2022 lead and copper results. The email notifying Tellico specifies "This is something that requires a Tier 3 public notice to be completed, which will be due by 12/23/2023." and we were provided the standard monitoring violation template to be completed for this violation.

The monitoring violation template provided states:
"We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not our drinking water meets health standards. During ***[compliance period]*,** we did not monitor for ***[contaminant(s)]*** and therefore cannot be sure of the quality of our drinking water during that time."

Tellico did not provide the monitoring violation public notice as requested by Dec 23rd. I am formally requesting you to invalidate the request for Tellico Plains to issue a public notice for failure to timely notify customers of their specific lead and copper results for the following reasons:

1. The required language for a monitoring violation stated above would be a **false statement** to the customers of Tellico Plains. Tellico Plains did monitor for Lead and Copper according to their sampling requirements and TDEC was provided these results when sampling occurred in 2022. Issuing a false public notice to customers would undermine the credibility of the water system. A few TDEC staff members tried to counsel me to further explain in the public notice to customers that the issue was

actually a reporting issue. Further explanations are allowable for public notices however Rule 0400-45-01-.19(5)(c)1.(iv) States “Must not contain language which nullifies the purpose of the notice”. In this case any honest further explanation would nullify the purpose according to TDEC of the notice. Imagine trying to explain such a public notice to a customer, Tellico staff would have to inform customers: we were required to send you this monitoring violation by TDEC but we really didn’t fail to monitor. Who would the customer believe? The language required to be sent by TDEC or the local Tellico Staff stating that monitoring was actually completed and results were in compliance?

2. Neither TDEC nor EPA regulations require a **Public Notice** for failure to report results to customers for lead and copper. The Rule requiring customers to be notified of lead and copper results is 0400-45-01-.33(6)(e) Notification of results subsection 1. Reporting Requirements… subsection 2. Timing of notification… subsection 3. Content… subsection 4. Delivery… Requirements in .33(6)(e) are clearly **Public Education and Reporting** requirements not monitoring requirements. The lead and copper Rule in .33 lists exhaustive requirements to notify and educate the public for systems which exceed the lead or copper action level. The intent of .33(6)(e) is on its face a reporting requirement as it states, “reporting requirement”. Had it been intended to be a monitoring requirement requiring public notice or education it would state this requirement and it would be in the lead and copper Rule listed with the other monitoring requirements in .33 (7), (8), or (9). The lead and copper regulations are unique in drinking water with regard to action levels instead of MCL’s and they are unique in the public education (notification) requirements directly in the Rule (.33(6)(a thru c)) instead of standing on the public notice requirements in 0400-45-01-.19.

   Review of the Public Notice regulations in 0400-45-01-.19 further confirms that the regulations do not require public notice for this reporting violation.

   0400-45-01-.19**(1)(a):** Each owner or operator of a public water system must give public notice for all violations of national primary drinking water regulations and for other situations as listed in Table 0400-45-01-.19(1)(a). The term national primary drinking water regulation is used in this rule to include violations of the maximum contaminant level (MCL), maximum residual disinfectant level (MRDL), treatment technique (TT), monitoring requirements, and testing procedures described in these regulations. Appendix A to this rule identifies the tier assignment for each specific violation or situation requiring a public notice.

   Note* Section (1)(a) of the public notice chapter defines national primary drinking water regulation (NPDWR) and when public notice is required. None of the categories listed in .19(1)(a) apply to this situation in Tellico Plains. Table 0400-45-01-.19(1)(a) further defines “Violation Categories and Other Situations Requiring a Public Notice” and none of the categories apply to failure to report lead and copper results to customers. APPENDIX A TO Rule 0400-45-01-.19 lists subsection C 1. Lead and Copper Rule (TT). (TT) means treatment technique and in this context applies to treatment

techniques in the lead and copper Rule such as water quality parameters assigned to maintain optimal corrosion control in systems. If a system fails to monitor water quality parameters as required, then a public notice for failure to monitor could be issued. Listing all of .33 in appendix A does not mean reporting violations are elevated to monitoring violations requiring public notice. Further proof of the fact that reporting violations do not require public notice can be gleaned from .19(5)(d) which requires standard language in public notices to include 1. Health effects… 2. Standard language for monitoring (see above)… 3. Language to encourage distribution. No standard language is available for reporting violations because it was not the intent of the public notice regulations to require notices for reporting violations.

It is unfortunate that I have had to write you this correspondence to elevate this issue to your attention. I have attempted to resolve this issue through numerous discussions with your Staff. I find the lack of common sense and regulatory understanding on this issue to be nauseating. To be clear it is not the Knoxville field office staff I am referring to but rather central office staff who choose to twist and distort the regulations to the point of requiring a water system to issue a public notice which is a blatant misrepresentation of the facts. From discussions with Staff, this interpretation of the Rules has been occurring for several years. How many systems have issued monitoring violation Public Notices which were false for lead and copper reporting issues? And in doing so have undermined their customers' confidence in Tennessee's Public Water systems? In discussion with one of your central office staff members on this issue I asked what was the intent of the Public Notice Regulations? His response was transparency. The purpose of the Public Notice Regulations is to notify customers of an issue which negatively affects or has the potential to negatively affect the water quality customers consume. Requiring systems to issue public notices for non-regulatory required violations undermines the intent of the Public Notice Rules and exceeds the authority granted to TDEC by the legislative branch.

I look forward to your response.

Sincerely,

Troy D. Taubert

Roaring River Consulting

Certified Operator in Direct Charge for Tellico Plains Water Plants

931-284-6437

Cookeville TN 38506